

UNITED STATES OF AMERICA,  
  
Plaintiff,  
v.  
PAULA ANDREWS,  
  
Defendant.

ORDER

## I. Factual Background

1

At trial, a jury found Andrews guilty of one count of second-degree murder for the murder of Williams, one count of aiding and abetting in second-degree murder for the murder of Lowery, two counts of attempted voluntary manslaughter, and all four firearms charges.<sup>1</sup> See *United States v. Andrews*, 75 F.3d 552, 554-55 (9th Cir. 1996). Ivan was found guilty of one count of second-degree murder for the murder of Lowery, one count of aiding and abetting in second degree murder for the murder of Williams, two counts of aiding and abetting attempted voluntary manslaughter, and all four § 924(c) charges. On appeal, the Ninth Circuit affirmed Paula Andrews' convictions. However, after concluding that there was "no evidence that Ivan knowingly and intentionally aided, counselled, commanded, induced, or procured Paula to shoot the people in the car," *id.* at 555, the Court of Appeals reversed Ivan's three aiding and abetting convictions and the § 924(c) convictions that relied thereon. Andrews now moves to vacate her four § 924(c) convictions.

## II. Legal Standards

Pursuant to 28 U.S.C. § 2255, a federal inmate may move to vacate, set aside, or correct her sentence if: (1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the court was without jurisdiction to impose the sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) the sentence is otherwise subject to collateral attack. *Id.* § 2255(a).<sup>2</sup>

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<sup>1</sup> The law of the case precludes Andrews' contention that any of her convictions - save for the murder of Lowery - was under an aiding and abetting theory.

<sup>2</sup> The government does not argue that Andrews' motion is untimely or that cases on which she relies are not retroactive.

1 Following a number of recent Supreme Court decisions, Andrews  
2 argues that her § 924(c) convictions are no longer valid. Section  
3 924(c) criminalizes the use of a firearm during and in relation to  
4 a crime of violence. The statute defines "crime of violence" as

5 an offense that is a felony and – (A) has as an element  
6 the use, attempted use, or threatened use of physical  
7 force against the person or property of another, or (B)  
8 that by its nature, involves a substantial risk that  
9 physical force against the person or property of another  
10 may be used in the course of committing the offense.

11 18 U.S.C. § 924(c)(3).

12 In 2019, the Supreme Court held that subsection (B) –  
13 otherwise referred to as the residual clause – was  
14 unconstitutionally vague. *United States v. Davis*, 588 U.S. 445  
15 (2019). Thus, to qualify as a crime of violence now, a crime must  
16 meet the definition set forth in subsection (A), referred to as  
17 the elements clause. In determining whether a crime meets the  
18 definition set forth in the elements clause, courts apply the  
19 categorical approach of *Taylor v. United States*, 495 U.S. 575,  
20 598–600 (1990). Under this approach, "'the facts of a given case  
21 are irrelevant,' and [the court focuses] instead on 'whether the  
22 elements of the statute of conviction meet the federal standard.'" *United States v. Draper*, 84 F.4th 797, 802 (9th Cir. 2023). "The  
23 question . . . is thus whether a conviction . . . necessarily 'has  
24 as an element the use, attempted use, or threatened use of physical  
25 force against the person or property of another.'" *United States*  
26 *v. Buck*, 23 F.4th 919, 924 (9th Cir. 2022) "If any—even the least  
27 culpable—of the acts criminalized do not entail that kind of force,  
28 the statute of conviction does not categorically match the federal

1 standard." See *id.* (citing *Borden v. United States*, 593 U.S. 420  
2 (2021))

3 In 2021, the Supreme Court in *Borden* "held that a statute  
4 defining 'crime of violence' like § 924(c) does not apply to  
5 offenses that punish ordinary recklessness." *Draper*, 84 F.4th at  
6 802 (citing *Borden*, 593 U.S. 420). While *Borden* did not decide  
7 whether a crime committed with a mens rea of extreme recklessness  
8 might nevertheless qualify as a crime of a violence, the Ninth  
9 Circuit in 2022 concluded that it does, when it found second-  
10 degree murder to be categorically a crime of violence under  
11 § 924(c). *United States v. Begay*, 33 F.4th 1081, 1093-95 (9th Cir.  
12 2022) (en banc), *cert. denied*, - U.S. -, 143 S. Ct. 340 (2022).

### 13 **III. Analysis**

14 Andrews argues that second-degree murder, aiding and abetting  
15 second-degree murder, and attempted voluntary manslaughter do not  
16 categorically qualify as crimes of violence under § 924(c), and so  
17 her § 924(c) convictions -- Counts Five, Six, Seven and Eight --  
18 must therefore be vacated.

19 Andrews' arguments with respect to her convictions predicated  
20 on second-degree murder and aiding and abetting second-degree  
21 murder are directly foreclosed by binding Ninth Circuit law. As  
22 noted above, the Ninth Circuit has held that a "conviction for  
23 second-degree murder pursuant to § 1111(a) constitutes a crime of  
24 violence" for purposes of § 924(c). *Begay*, 33 F.4th at 1093.  
25 Further, the Ninth Circuit has held that "aiding and abetting a  
26 crime of violence . . . is also a crime of violence." *United States*  
27 *v. Eckford*, 77 F.4th 1228, 1236 (9th Cir.), *cert. denied*, 144 S.  
28 Ct. 521 (2023) (quoting *Young v. United States*, 22 F.4th 1115,

1 1123 (9th Cir. 2022)). Thus, as Andrews' Count Five and Count Six  
2 convictions, based on aiding and abetting second-degree murder and  
3 second-degree murder, are validly predicated on qualifying crimes  
4 of violence, her motion to vacate Counts Five and Six must be  
5 denied.

6 The court concludes that Andrews' arguments regarding her  
7 attempted voluntary manslaughter convictions should also be  
8 denied. Voluntary manslaughter in violation of 18 U.S.C. § 1112(a)  
9 - the lesser included offense of which Andrews was convicted - is  
10 "the unlawful killing of a human being without malice . . . [u]pon  
11 a sudden quarrel or heat of passion." The Ninth Circuit has held  
12 that this is a crime of violence for purposes of § 924(c). See  
13 *United States v. Draper*, 84 F.4th 797, 800, 803-06 (9th Cir. 2023).  
14 The Ninth Circuit has also held, in *Dorsey v. United States*, that  
15 attempted killing is a crime of violence. 76 F.4th 1277, 1282-84  
16 (9th Cir. 2023). While *Dorsey* involved a different statute, its  
17 rationale is also applicable here.

18 Attempt to kill requires showing that the defendant did  
19 something that was a substantial step toward killing another and  
20 that the defendant acted with the requisite intent. *United States*  
21 *v. Snell*, 627 F.2d 186, 187 (9th Cir. 1980); see also *Dorsey*, 76  
22 F.4th at 1283-84. As noted in *Dorsey*, the substantial step toward  
23 killing need not itself be violent. "Even if the defendant took  
24 only a slight, nonviolent act with the intent to cause another's  
25 death, that act would pose a threat of violent force sufficient to  
26 satisfy the definition of a crime of violence." *Id.* at 1283  
27 (internal punctuation omitted) (citing *United States v. Studhorse*,  
28 883 F.3d 1198, 1206 (9th Cir. 2018)).

1 In her reply, Andrews argues that following *United States v.*  
2 *Taylor*, 596 U.S. 845 (2022), an attempt to commit a crime of  
3 violence is not necessarily a crime of violence itself. She also  
4 argues that the jury in this case was not instructed on attempted  
5 voluntary manslaughter and was not required to find a substantial  
6 step toward killing that involved the use of force.

7 Contrary to Andrews' assertions, *Taylor* has no bearing on  
8 this case. In *Taylor*, the Supreme Court held that an attempt to  
9 commit Hobbs Act robbery is not a crime of violence because it can  
10 be committed through an attempt to threaten use of force, which is  
11 overbroad of the elements clause in § 924(c). But attempted killing  
12 cannot be committed by an attempt to threaten use of force;  
13 instead, it requires an attempt to use force. See *Alvarado-Linares*  
14 *v. United States*, 44 F.4th 1334, 1346-47 (11th Cir. 2022) (cited  
15 with approval in *Dorsey*, 76 F.4th at 1284) ("[T]he completed crime  
16 of murder always requires the use of physical force 'because it is  
17 impossible to cause death without applying force that is capable  
18 of causing pain or physical injury.' . . . . '[W]here a crime of  
19 violence requires the use of physical force ... the corresponding  
20 attempt to commit that crime necessarily involves the attempted  
21 use of force.'"); see also *Dorsey*, 76 F.4th at 1283-84 ("We join  
22 our sister circuits in concluding that *Taylor* does not require us  
23 to reconsider our precedent holding that attempted killing is a  
24 crime of violence.").

25 And Andrews' arguments regarding the jury instructions are  
26 likewise not persuasive. The instructions, considered as a whole,  
27 properly instructed the jury on the elements of attempted voluntary  
28 manslaughter. Jury Instruction No. 21 instructed the jury on

1 voluntary manslaughter as a lesser-included offense of the charged  
2 crime, first-degree murder. (ECF No. 72 at 30). Jury Instructions  
3 13 and 14 instructed the jury on attempted murder, which would  
4 necessarily apply to any lesser-included offenses, and required  
5 finding both a substantial step toward committing the crime and  
6 that Andrews acted at least recklessly with extreme disregard for  
7 human life. (ECF No. 72 at 19-20). These instructions together  
8 provided the necessary legal framework for evaluating whether  
9 Andrews was guilty of attempted voluntary manslaughter. Finally,  
10 as noted above, the court in *Dorsey* made clear that the substantial  
11 step toward killing need not itself be violent for the attempt to  
12 qualify as a crime of violence.

13 Accordingly, the court concludes that under the relevant case  
14 law, federal attempted voluntary manslaughter is categorically a  
15 crime of violence. Andrews' motion to vacate her convictions under  
16 Counts Seven and Eight will be denied.

#### 17 **IV. Certificate of Appealability**

18 In order to proceed with an appeal, Andrews must receive a  
19 certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App.  
20 P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951  
21 (9th Cir. 2006); see also *United States v. Mikels*, 236 F.3d 550,  
22 551-52 (9th Cir. 2001). Generally, a defendant must make "a  
23 substantial showing of the denial of a constitutional right" to  
24 warrant a certificate of appealability. *Allen*, 435 F.3d at 951; 28  
25 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84  
26 (2000). "The petitioner must demonstrate that reasonable jurists  
27 would find the district court's assessment of the constitutional  
28 claims debatable or wrong." *Allen*, 435 F.3d at 951 (quoting *Slack*,

1 529 U.S. at 484). In order to meet this threshold inquiry, Andrews  
2 has the burden of demonstrating that the issues are debatable among  
3 jurists of reason; that a court could resolve the issues  
4 differently; or that the questions are adequate to deserve  
5 encouragement to proceed further. *Id.*

6 The court has considered the issues raised by Andrews, with  
7 respect to whether they satisfy the standard for issuance of a  
8 certificate of appealability, and determines that none meet that  
9 standard. Accordingly, Andrews will be denied a certificate of  
10 appealability.

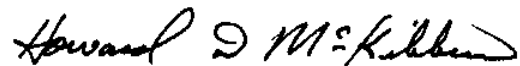
11 **V. Conclusion**

12 In accordance with the foregoing, IT IS THEREFORE ORDERED  
13 that Andrews' motion to vacate, correct or set aside sentence  
14 pursuant to 28 U.S.C. § 2255 (ECF Nos. 214 & 217) is DENIED.  
15 Andrews is further DENIED a certificate of appealability.

16 The Clerk of Court shall enter final judgment accordingly.

17 IT IS SO ORDERED.

18 DATED: This 3rd day of July, 2024.

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21 UNITED STATES DISTRICT JUDGE  
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